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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Further Forebearance from
Title II Regulation for Certain Types of
Commercial Mobile Radio Service
Providers

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GN Docket No. 94-33

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JUN 28 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

COMMENTS

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SUMMARY OF THE FILING

Applied Technology Group, Inc. comments on the Commission's proposals for forbearance from certain statutory requirements for providers of Commercial Mobile Radio Service.

The Commission's regulation of obscene, harassing and indecent communications has thus far been directed toward wireline communications. In view of 18 U.S.C. §1464, which prohibits the transmission of obscene, indecent, or profane speech by means of radio communication, the Commission should require CMRS operators to block access for all subscribers to adult information services providers.

The public interest would not be well served by requiring a CMRS provider to contribute to the Telecommunications Relay Service fund. Those SMR and PCP operators who are to become CMRS operators already contribute to the fund through subscriber line charges and requiring them to contribute to the fund would double taxation without spreading the tax to any additional taxpayers. Because certain types of paging services obviate the need for TRS, the Commission should take the specific services offered by a CMRS operator into account in deciding whether to require the operator to contribute to the TRS fund.

Providers of CMRS are not currently configured to provide equal access to interexchange carriers. Requiring them to do so would impose thousands of dollars of cost on each operator, with no resulting benefit to the public.

Small businesses should be granted maximum forbearance from the requirements which are at issue in the instant proceeding. An SMR operator which is not authorized for exclusive use of sufficient channels to operate an Enhanced SMR system should be granted maximum forbearance. A PCP operator which does not have exclusive use of a channel should also be afforded the maximum possible forbearance.

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COMMENTS

Applied Technology Group, Inc. (Applied Technology), by its attorneys, hereby respectfully submits its Comments in the above captioned proceeding. In support of its position, Applied Technology shows the following:

Applied Technology and its predecessors in interest have been engaged in the radio communications business since the 1920s. Applied Technology is currently the operator of highly successful Specialized Mobile Radio Systems in the vicinity of Bakersfield, California. Applied Technology is a small operator which has concentrated its activities on serving its home market well and has continuously expanded its service to meet the actual needs of its local customers. In 1996, Applied Technology will become a Commercial Mobile Radio Service provider, and, accordingly, has an interest in the further forbearance which the Commission has proposed in the instant proceeding. Herein, Applied Technology explains its position concerning the Commission's proposals for forbearance from enforcement of certain of the sections of the Communications Act.

Section 233: Obscene, Harassing, Indecent Communications

Currently, in accord with the Commission's Rules concerning interconnection of SMR systems, Applied Technology is the sole subscriber of the local exchange carrier for all of the lines used to interconnect its SMR system with the public switched telephone network (PSTN). Access to the 976 exchange and to all 900 Service is blocked by the local exchange carrier. None of the subscribers of Applied Technology has ever requested access to the services of an adult information provider through the SMR system. Because its system is used almost entirely by persons engaged in business activities, Applied Technology does not expect that it ever will receive such a request. However, the lack of a request to date does not mean that the matter is academic. Rather, the Commission's NPRM raises substantial questions concerning the rights and duties of CMRS providers with respect to "reverse blocking".

Although the blocking of access to adult information providers has not yet been a problem for Applied Technology, three areas of uncertainty remain which the Commission should resolve. The first uncertainty is whether the Commission should authorize any CMRS operator to provide access to adult information services in any way, whatsoever. The second uncertainty is whether a CMRS provider which obtains access to the PSTN from a local exchange carrier and, through interconnection of its radio system, provides its subscribers with access to the PSTN should be classified as a carrier which "bills and collects fees for the adult information provider." The third uncertainty is who should bear the cost of a subscriber's obtaining access to adult information services.

To this point in time, the Commission has considered the provision of indecent communications for commercial purposes solely in the context of the wireline network. However, section 1464 of the United States Criminal Code, 18 U.S.C. §1464, prohibits the uttering by means of radio communication any obscene, indecent, or profane language. Section 1464 provides no exception for persons uttering such language for purposes of communicating with persons who desire to receive such language. It is improbable that any minor will come into contact with the instant document, and, therefore, it can be laid bare that the entire reason for the existence of adult information services is to provide indecent language on a commercial basis to persons who desire to hear such language. Since the statute clearly makes the transmission of indecent language by radio communication a federal felony, the Commission should not authorize a CMRS provider to unblock access to the 976 exchange and to 900 Services to any subscriber. Instead, the Commission should require that a CMRS vendor impose an absolute block to the 976 exchange¹ and to 900 Service.²

As do all common carriers and most SMR operators, Applied Technology is the subscriber of the local exchange carrier and passes the cost of PSTN service on to its subscribers. If Applied Technology were to unblock access to the 976 exchange or to 900

¹ And to any other local exchange which is available to adult information providers.

² Applied recognizes that requiring the blocking of access to 900 Service may impose a burden on those persons who provide 900 Services which are not adult oriented. However, under the constraints of today's technology, there does not appear to be any practical, less restrictive alternative available.

Service, then Applied Technology would be billed for any such calls by the local exchange carrier, or by an interexchange carrier, depending on the billing arrangements entered into by the adult information provider. Applied Technology would then pass that charge on to the subscriber who made or received the call. The NPRM does not indicate whether, under such circumstances, a CMRS (once it becomes a common carrier) stands in the position of a carrier which "bills and collects fees for the adult information provider," NPRM at paragraph 12. If the Commission determines that the CMRS provider serves as the billing and collecting agent for the information provider under such circumstances, then the Commission should require the CMRS provider to provide an absolute block to access to the 976 exchange and to 900 Service, thereby preventing any adult information provider from transmitting indecent language by means of radio communication. Alternatively, the Commission should expressly authorize a CMRS operator to refuse to provide access to all subscribers to any local exchange or Number Plan Area code which is available to adult information providers.

All of Applied Technology's lines which are interconnected to the SMR system are arranged in a rotary configuration and all lines are randomly available to all subscribers. For that reason, and because the blocking is provided by the local exchange carrier, arranging to provide access to adult information services for one customer would require extensive reconfiguration of Applied Technology's technical system. Were Applied Technology to receive a request for unblocking of access for a subscriber, then the question arises of who should bear the cost of the reconfiguration.

Were Applied Technology to be required to provide access to adult information services upon demand by a specific subscriber, then Applied Technology would either have to provide a separate line for interconnection of that subscriber's calls and install the additional routing equipment necessary to arrange for such service, or would have to install an additional device to screen all calls and unblock access only to certain mobile units. Either alternative would require an additional investment of thousands of dollars.

Applied Technology believes that requiring it to distribute across all subscribers the cost of unblocking access to adult information providers for only some subscribers would not be in the public interest. Applied Technology's operation of an interconnected SMR-Trunked system for many years, during which no customer has ever requested unblocking, demonstrates that it is improbable that any substantial number of subscribers would ever request such access. Therefore, it would be unfair to nearly all of its subscribers for Applied Technology to distribute the cost of providing adult information access to any of its subscribers. Accordingly, Applied Technology suggests that if the Commission does not either require or authorize a CMRS operator to refuse to unblock the restricted access, then the Commission should authorize the carrier to require those subscribers who desire unblocking to pay the full cost of the requested special service, including any special construction which may be required.

Section 225: Telecommunications Relay Services

Although the Commission has determined that "interstate service includes, but is not limited to, the interstate portion of . . . mobile radio," NPRM at para. 19, n. 45, Applied

Technology respectfully requests clarification of the Commission's meaning. Applied Technology's facilities are located in the deep San Joaquin Valley of California. All dispatch communications and all communications between mobile units of Applied Technology's system are from one point with a single state to another point within the same state. Currently, Applied Technology requires that all interconnected calls to points outside California be made by credit card and Applied Technology is not involved in any way in those transactions. Eight of the 30 largest American urban areas are situated on state boundaries, and, under those circumstances, the Commission might determine that calls between a dispatcher in one state and a mobile unit in a different state were interstate in nature.³ However, since Applied Technology's system is not technically capable of providing service to mobile units located in any state other than California, it would appear that Applied Technology provides no interstate service.

If the Commission were to determine that Applied Technology's radio communication service was interstate in nature, then Applied Technology respectfully suggests that the public interest would not be served by requiring a CMRS operator to contribute to the Telecommunications Relay Service Fund. At paragraph 19 of its NPRM, the Commission stated that "the objective of requiring contributions is to ensure that TRS costs are widely and equitably distributed." As explained above, Applied Technology obtains access to the PSTN from the local exchange carrier and is billed for the service. Applied Technology then passes those

³ Applied leaves for other interested persons the question of how a CMRS carrier providing service across state boundaries would be expected to determine whether both ends of a radio-only communication were located in the same state.

charges directly on to its customers who use interconnected service. Some portion of the price which Applied Technology is charged for telephone service is comprised of a contribution to the TRS Fund. Applied Technology passes that charge on, intact, to its subscribers. Accordingly, the contribution which Applied Technology pays to (or through) the local exchange carrier is, in fact, distributed as fully as possible, namely, to the ultimate user of the telephone service. Since the ultimate user is already required to contribute to the TRS Fund, the needs of the fund can be met without imposing a requirement for Applied Technology, as a CMRS provider, to make an additional contribution to the Fund. Requiring Applied Technology to make an additional contribution (which would be fully distributed to its subscribers)⁴ would result in double billing of the ultimate communications service users for contributions to the TRS Fund and impose an unnecessary, additional bookkeeping cost on Applied Technology. To avoid imposing a requirement on CMRS subscribers for making a double contribution to the TRS Fund and for supporting the cost of additional paperwork, the Commission should exempt CMRS providers from any requirement to contribute to the Fund.

In determining whether a carrier should be required to contribute to the TRS fund, the Commission should take into account the nature of the services which the carrier makes available. With respect to one-way paging services, subscribers who are hearing impaired can subscribe to alphanumeric paging and do not require the services of a TRS operator. Paging

⁴ Because Applied would have the ability to pass on to its subscribers any contribution which it would be required to make to the TRS Fund, it should be clear that Applied is concerned solely with avoiding double taxation of its subscribers, and not with its own interest in the matter.

subscribers whose vision is impaired can use tone-plus-voice paging and no TRS service is required. Providing TRS service so that a hearing impaired person could be sent tone-plus-voice pages or so that a vision impaired person could be sent an alphanumeric message would seem not to be a useful exercise. Based on these examples, Applied Technology suggests that in determining whether to impose a TRS contribution requirement on a CMRS provider, the Commission should take into account the nature of the services which the CMRS provider offers which inherently meet the needs of the disabled, and, to the extent that the services offered meet those needs as well as would TRS could, the Commission should not require a TRS contribution.

Section 226: Operator Services

As explained, above, Applied Technology's SMR system is interconnected with the facilities of the local exchange carrier. Applied Technology's SMR system is not connected directly with any interexchange carrier. However, Applied Technology is, of course, presubscribed as a subscriber of only one interexchange carrier for the local exchange lines on which interconnected service is provided.

It would not be technically feasible for Applied Technology to provide a separate phone line for use only by each individual subscriber so that each subscriber could have his choice of presubscribed interexchange carrier.⁵ However, all of Applied Technology's intereconnected

⁵ While a substantial amount of additional equipment might make it possible for Applied to provide a separate subscriber line for each customer, or for Applied otherwise to connect a subscriber to a specific interexchange carrier automatically, not only would the cost of the thousands of dollars in additional equipment have to be borne by the subscribers, but the cost of access would be higher for each customer because each customer would have to bear the full

customers have the option of using the interexchange carrier of their choice by dialing the appropriate 10XXX code prior to dialing the remainder of the destination digits. Accordingly, Applied Technology respectfully requests that the Commission determine that an interconnection method which allows a CMRS subscriber to reach its choice of interexchange carrier by use of a 10XXX code complies with any equal access requirement which the Commission may impose.

Because Applied Technology cannot be certain that it will continue to use the interconnection method described above when it becomes a common carrier in 1996, Applied Technology respectfully suggests that the Commission forebear from requiring a CMRS provider to comply with Section 226 under a specific condition. If the CMRS provider limits access to the interexchange carrier which can reasonably be expected to provide the lowest aggregate charges for the service provided to the CMRS's subscribers, then the Commission should permit the CMRS to limit interexchange access to that carrier.

Because SMR operators, as well as PCP operators, were, for more than a decade, not only permitted, but required to make specialized arrangements with each end user and to decide whether to accept or reject any customer's offer, many SMR operators have established a group of customers whose characteristics they know well. It is likely that most SMR operators'

cost of basic telephone service, rather than having the basic cost of a small number of trunked lines distributed across all end users. It is, course, possible that anything conceivable in the material world may be technically feasible if cost is no object. However, to the extent that cost is a factor in considering technical feasibility, Applied strongly suggests that requiring a CMRS vendor to provide automatic access to a mobile subscriber's choice of interexchange carrier would not be found under any reasonably foreseeable circumstances to be technically feasible.

existing customers share a number of characteristics, including the areas which they are likely to call outside the local exchange. Therefore, many SMR operators should have no difficulty analyzing the offerings of various interexchange carriers and selecting the one which can be expected to provide the lowest aggregate charge to the customer group.

For the foregoing reasons, Applied Technology submits that an SMR system can be expected to meet the three statutory tests for forbearance from any equal access requirement. First, a requirement for the provision of equal access is not necessary to ensure that charges, practices, classifications, or regulations are just and reasonable and not unduly discriminatory. Second, enforcement of Section 226 on an SMR is not necessary for the protection of the SMR's consumers. Third, specifying forbearance from Section 226 is in the public interest because it will provide the opportunity for the lowest costs to mobile subscribers, while allowing them fully to meet their mobile communications needs.

Small Businesses Should Be Excepted

The Commission requested comment on whether it should forebear from imposing some costly regulations on CMRS providers, based on their size. Applied Technology respectfully submits that the Commission should acknowledge that the ability of CMRS operator to comply with certain requirements without either suffering direct financial hardship or becoming unable to compete is a consequence of its absolute size, as well as its relative size in its market.

As the Commission is well aware, the SMR business has been consolidating rapidly. In contrast to the situation of only a few years ago in which all SMR operators were small by any measure, the business now consists of a small number of companies ranging in estimated worth of from one half billion to six billion dollars, together with a larger collection of other operators, each of which is much, much smaller in size, and each of which has no market power, whatsoever. As is well known, the potential for abuse of the public by a carrier is directly related to its size and the closeness to which it approaches market power. Those SMR operators whose facilities have not been acquired by the major players in the field can expect to provide good, reliable service to the public for many years to come, but they will never have the ability to treat their customers unreasonably or unjustly.

It is, of course, difficult to select a means for distinguishing between a large operator and a small business in the CMRS field. However, it would appear that there is at least one reasonable basis for a measure which would slice neatly between the large and the small.⁶ In its Notice of Proposed Rule Making in PR Docket No. 93-144, _____ FCC Rcd. _____ (FCC 93-257 Released June 9, 1993), the Commission suggested that it would establish the number of SMR Category channels appropriate to a wide-area SMR system at 42.⁷ At least as a beginning point, subject to later consideration if review of the market reveals problems, the

⁶ Other measures may also be appropriate, such as gross profit or number of subscribers.

⁷ The apparent basis for that number is an assumption that a seven-cell array of stations would become efficient if each cell had six channels.

Commission should determine that a CMRS operator in the 220 MHz, 800 MHz, or 900 MHz band is a small operator if it is assigned fewer than a total of 42 SMR Category channels when aggregated across contiguous service areas. If an SMR operator is not licensed for sufficient SMR Category channels that it can be expected to become a wide-area operator, the Commission should conclude that, at least on an interim basis, forbearance from the requirements of Sections 225 and 226 is in the public interest. If the Commission determined that any significant abuse of the public interest results from such forbearance, it could, at any time, reconsider the matter fully.

With respect to Private Carrier Paging systems which will become common carriers, Applied Technology suggests that forbearance from the provisions of Section 225 should be exercised if a PCP operator does not hold an exclusive authorization for use of a channel in a given area. If a PCP operator is not large enough to hold exclusive use of a channel, then it is improbable that the public interest would be well served by imposing the paperwork requirements on the carrier necessary to make contributions to the TRS Fund. Therefore, the Commission should forbear from enforcing Section 225 on any PCP which does not have exclusive use of a channel in a given area.⁸

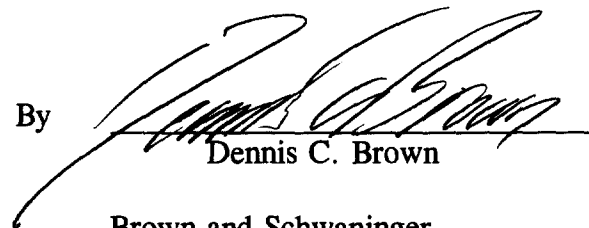
⁸ Depending on the business methods employed, paperwork costs can vary. To the extent that a PCP operator holds an exclusive authorization on one channel or in one area and not in another, the operator could be given the option of accepting forbearance for the services provided by the non-exclusive stations, or accounting for all of its services as if Section 225 applied to it fully.

Conclusion

For all the foregoing reasons, Applied Technology respectfully requests that the Commission exercise forbearance from regulation as suggested herein.

Respectfully submitted,
APPLIED TECHNOLOGY
GROUP, INC.

By

A handwritten signature in black ink, appearing to read "Dennis C. Brown", is written over a horizontal line.

Dennis C. Brown

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